

In South Carolina, for instance, the State commission concluded that BellSouth's electronic interfaces for pre-ordering, ordering and provisioning, maintenance and repair, and billing are operational and comply with the competitive checklist today." Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. 97-101-C, Order No. 97-640 at 34 (SC PSC, July 31, 1997). Likewise, after hands-on examination of BellSouth's OSS interfaces, the North Carolina Utilities Commission staff recently issued a proposed order concluding that "BellSouth's electronic interfaces provide [CLECs] with access to BellSouth's OSS . . . that is substantially the same as, and in many cases better than, that which BellSouth provides its own retail personnel." NCUC Public Staff Proposed Order at 24 (attached to Stacy OSS Reply Aff. as Ex. WNS-1).

Like DOJ, AT&T would have this Commission override the Louisiana PSC because not every state regulator in BellSouth's region agrees with its conclusions. Unlike DOJ, however, AT&T maintains that the Georgia PSC found BellSouth's OSSs not in compliance with the Act. See AT&T at 43. As the attached affidavit of William Stacy explains in detail, that is false. Stacy Reply OSS Aff. ¶¶ 12-15. In the decision on which AT&T relies, the Georgia PSC explicitly stated it was not reaching "any conclusion as to whether BellSouth or its revised SGAT would meet the checklist requirements of Section 271." Interim Order Regarding Revised Statement, Docket No. 7253-U (GA PSC, Oct. 29, 1997). It is wrong for AT&T to pretend that the Georgia PSC reached final conclusions regarding OSS access, let alone that the PSC resolved disputed issues against BellSouth.

It is even more preposterous to contend that the Louisiana PSC's recommendations may be ignored in favor of a subordinate ALJ's views. MCI at 12-13; Worldcom at 15-16. In addition to the obvious procedural falsity of such claims, they ignore the investigation conducted by the Louisiana Commissioners themselves. As ALTS concedes, "the ALJ's decision did not take into account" the live forum in which Commissioners were able to hear the CLECs' criticisms of BellSouth's OSSs and see for themselves the falsity of those claims. ALTS at 20; see Louisiana PSC at 28. The Louisiana PSC's determination that BellSouth provides CLECs "full nondiscriminatory access" to its OSSs — which the PSC confirms was based on "careful consideration and analysis," Louisiana PSC at 28 — should be respected.

2. *Substantive Criticisms of BellSouth's Systems Are Unfounded*

In their substantive efforts to overcome the Louisiana PSC's determination that BellSouth meets the checklist's OSS requirements, commenters advance irrelevant or simply fallacious claims. Past problems with BellSouth's standard offerings were fixed promptly and BellSouth is working to develop customized systems for CLECs that desire them. See, e.g., Stacy OSS Reply Aff. ¶ 30. Indeed, many of the supposed problems cited by CLECs in this proceeding were resolved long before BellSouth filed its Application. It appears that in reflexive opposition to BellSouth's application, some commenters have failed to determine whether any real issues still exist. ACSI, for instance, contends that BellSouth is only now "in the process of developing and making available its LENS and EDI interfaces." ACSI at 36. But this is simply incorrect. EDI which has been used in various contexts for 30 years, has been available for CLEC access since December, 1996; LENS has been available since April 28, 1997. EDI and LENS are now being

used operationally by more than two dozen CLECs. Stacy OSS Aff. ¶ 111 & Exs. WNS-38, 39, 40. Nor can there be any contention that BellSouth will withdraw either interface after section 271 relief is granted. AT&T's Bradbury ¶ 23. Both LENS and EDI are identified in BellSouth's Louisiana PSC-approved agreements, such as that between Shell Offshore Services Company and BellSouth.

Likely encouraged by DOJ's decision to toss the Act's requirements out the window and rely instead upon its gut feelings about "facilitating competition," DOJ at 17, CLECs also attempt to use the section 271 process to gain OSS access beyond that required under sections 251 and 252. MCI, for instance, contends that the use of any manual processes is evidence that a section 271 applicant is not providing nondiscriminatory access to OSSs. MCI at 15. But MCI has failed to provide any evidence of discrimination, and has failed to explain how manual access is discriminatory if BellSouth uses manual processing in its comparable retail operations. DOJ likewise suggests that "machine-to-machine" interfaces are somehow a requirement of the Act, regardless of the capabilities of other electronic interfaces. See DOJ at App. 4, A-4 to A-6 & n.7. As this Commission has made clear, however, the Act requires that BellSouth provide CLECs with nondiscriminatory access to OSSs, not any specific type or level of access. Local Interconnection Order, 11 FCC Rcd at 15763, ¶ 517. For example, if BellSouth provides CLECs and its own analogous retail operations manual order processing, the requirements of the Act are met. As the following discussion confirms, BellSouth has satisfied the Act's requirements by providing CLECs with access to OSSs in "substantially the same time and manner" as

BellSouth's own retail service personnel. Local Interconnection Order, 11 FCC Rcd at 15764, ¶ 518.

a. Pre-Ordering. BellSouth currently offers CLECs nondiscriminatory access to pre-ordering functions through its LENS interface. While several commenters criticize LENS for not conforming to an industry standard, they generally fail to mention that while the Electronic Communications Implementation Committee ("ECIC") has been evaluating pre-ordering standards for some time, no permanent standards exist. Indeed, the ECIC recently recommended that the industry adopt not one, but two temporary "standards." Stacy OSS Aff. ¶ 6. The ECIC also indicated that only one of the two "standards" — the non-EDI one — may become the lone pre-ordering standard. See id.; Stacy OSS Reply Aff. ¶ 33. Indeed, as MCI at least acknowledges, final specifications for a pre-ordering interface still do not exist. See MCI at 27. Accordingly, if BellSouth had waited to deploy an industry standard interface instead of proceeding with its own "proprietary" system, there would be no pre-ordering interface at all.²² Stacy OSS Reply Aff. ¶¶ 31-33; DOJ at A-14. Consistent with this Commission's endorsement of industry standards "[a]s the most appropriate solution to meet the needs of a competitive local exchange market," Michigan Order ¶ 217, BellSouth will implement the new industry standard when it becomes available. Stacy OSS Aff. ¶ 6; Stacy OSS Reply Aff. ¶ 34.

²² Similarly, some commenters apparently do not recognize that the ECIC's failure to release specifications made it impossible to develop a standardized EDI interface that incorporates pre-ordering functions or that integrates pre-ordering and ordering functions. Intermedia at 5; Closz Aff. ¶ 26.

This is not to say that CLECs have been unable to obtain an integrated ordering/pre-ordering interface. See Sprint at 29; DOJ at A-14. CLECs may use LENS to get integrated pre-ordering/ordering. Stacy OSS Aff. ¶ 68.

Also contrary to some commenters' suggestions, see, e.g., Sprint at 28, CLECs are offered an interface that allows for a direct, application-to-application interface with the CLEC's own OSSs. See Stacy OSS Reply Aff. ¶¶ 36-40; see also DOJ at Ex. 4, A-12, A-13. This interface — CGI — allows CLECs to obtain electronic access to the information available through LENS and averts any need for "dual data entry." MCI at 25; see Stacy OSS Aff. ¶¶ 44-45 (discussing CGI). Because CGI allows BellSouth's OSSs to interface directly with the CLECs' OSSs, each individual CLEC is able to conduct the development work needed with respect to its own OSSs. See DOJ Ex. 4 at A-4 ("Application-to-application interfaces [between a BOC and its competitor] are particularly helpful because they allow competing carriers to build their own software for processing transactions with a BOC."). But the flip-side of CLECs' flexibility is that BellSouth cannot undertake the necessary development work regarding CLECs' proprietary systems. Thus, BellSouth cannot be faulted on the basis that it has not itself developed an operational CGI interface. See DOJ Ex. 4 at A-11 & n.16; Stacy OSS Reply Aff. ¶¶ 36-38 (after reviewing the draft CGI specifications, AT&T informed BellSouth that it had no interest in implementing the specification).²³

²³ As the Commission has explained, an incumbent LEC satisfies its obligation to make OSS access available when it provides CLECs "sufficiently detailed information . . . so that requesting carriers would be able to develop and maintain their own systems and procedures to make effective use of this standard." Second Report and Order, Implementation of the Local

BellSouth will make its CGI specifications available to any CLEC. In fact, contrary to those carriers' claims, both AT&T and MCI have received the specifications from BellSouth. See Stacy OSS Reply Aff. ¶¶ 36-40. As a result there is nothing to stop AT&T (or any other CLEC) from using CGI and EDI to create an integrated application-to-application interface capable of pre-ordering and ordering functions if such an interface is truly needed. See DOJ Ex. 4 at A-10 to A-11. Having chosen not to use CGI for their own business reasons,²⁴ CLECs should not be heard to complain that certain conveniences available through CGI are not available through LENS as well. See AT&T at 44-45 (contending that the lack of integrated interface requires duplicative entry of information); see also Stacy OSS Reply Aff. ¶¶ 35-40.

Several CLECs who have chosen to use the LENS pre-ordering interface raise specific concerns with its operation. KMC, for instance, claims that it takes a CLEC up to 10 minutes to obtain dial-up access to LENS. KMC Miller Aff. ¶ 15. KMC is incorrect. As explained in BellSouth's Application, LENS has been thoroughly tested by BellSouth. BellSouth Br. at 30. Furthermore, just as BellSouth's service representatives typically "log on" to their systems once, at the start of a work session, the process of "dialing up" typically is done once, at the start of a work session, and does not affect individual transactions with customers. LENS dial-up access

Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 19738, 19742, ¶ 8 (1996). The incumbent is not required to deploy the interface, which depends upon the choices of individual CLECs.

²⁴ AT&T, for instance, has preferred to wait for development of a custom-tailored interface (called "EC-LITE") it will use with multiple incumbent LECs, rather than utilize BellSouth's CGI specifications. See Stacy OSS Aff. ¶ 42; Stacy OSS Reply Aff. ¶ 30.

typically takes between one and two minutes, depending on the speed of the modem used by the CLEC. Stacy OSS Reply Aff. ¶ 48. BellSouth also provides LAN-to-LAN access to LENS, which provides a dedicated link to LENS and is an obvious alternative for any CLEC that is genuinely concerned about the access time inherent in dial-up connections. Stacy OSS Aff. ¶ 10.

Equally misleading are complaints that CLECs must repeatedly validate a customer's address when using LENS in its "inquiry" mode. See, e.g., MCI at 34; AT&T's Bradbury Aff. ¶¶ 62-64. The inquiry mode was developed to assist CLECs by allowing them to jump directly to the CLEC's choice of pre-ordering screens, without calling up all the information available through LENS or going through the "firm order" mode's sequenced ordering steps. See Stacy OSS Aff. ¶ 19-20; BellSouth OSS Interface Demonstration at 00:08:11 (Videotape, Application App. D, Tab 8). In order to access the particular pre-ordering database they select, however, CLECs must give the address validation needed to utilize the database. This process, however, hardly prevents CLECs from utilizing the LENS inquiry mode effectively.

Moreover, if CLECs would rather not use this short-cut, they can use the LENS firm order mode instead. Stacy OSS Reply Aff. ¶¶ 23-26. As MCI recognizes (at 34 n.27), the firm order mode, a predetermined logical sequence of screens, can be used without actually placing an order and allows a CLEC to perform pre-ordering functions without re-entering the customer's address. Stacy OSS Reply Aff. ¶ 25.

Opponents are wrong when they assert that if an order is not placed when in "firm order" mode, all information is lost. See AT&T's Bradbury ¶ 100. If, for example, a telephone number is "selected" in the firm order mode, the number database removes the number from the available

pool of numbers for 90 days. Stacy OSS Reply Aff. ¶ 23. During that period, the CLEC may issue the order and activate the "selected" number. Id.

In that regard, several commenters have suggested that LENS restricts CLECs' ability to obtain telephone numbers. See, e.g., AT&T at 45 (contending that CLECs are unable to "match BellSouth's ability to access and reserve telephone numbers"); MCI at 34-35. These commenters are wrong. There are no limitations on CLECs' ability to obtain telephone numbers for new customers. See Stacy OSS Aff. ¶¶ 24-25; Stacy OSS Reply Aff. ¶¶ 18-20. The restrictions at issue relate only to the quantity of numbers a CLEC can reserve without having a customer for those numbers. Pursuant to its negotiations with AT&T, BellSouth allows CLECs to have reserved for its future use up to 100 unused numbers per central office at any given time, regardless of the pre-ordering interface they use. The 100-number limit on this reservation capability was negotiated with AT&T in light of number conservation concerns, and is designed to avoid hoarding of unused number and premature exhaustion of scarce NPA/NXX codes. Stacy OSS Aff. ¶ 25; Stacy OSS Reply Aff. ¶¶ 18-20. Again contrary to MCI's allegations (at 35), LENS allows CLECs to reserve up to twelve additional numbers per session. Stacy OSS Aff. ¶ 25. CLECs can offer any of these reserved numbers to customers without launching a query to determine what other numbers are then available.

When selecting telephone numbers, CLECs may, for example, request vanity numbers, numbers with ascending or descending digits, numbers containing identical digits or patterns of digits. Stacy OSS Aff. ¶ 24. Contrary to the contentions of AT&T's witness, see AT&T's Bradbury ¶ 83, these capabilities have been thoroughly tested and are currently available through

LENS. They provide CLECs the same searching capabilities as BellSouth's own service representatives. Stacy OSS Aff. ¶¶ 18-27.

Repeating AT&T's and MCI's claims, DOJ objects that LENS does not provide an actual due date when in pre-ordering mode. DOJ Ex. 4 at A-17; see also AT&T at 45 (alleging that CLECs are unable to obtain a firm due date for most transactions); MCI at 35 (alleging that CLECs cannot obtain a firm due date when using LENS in "inquiry" mode). LENS, however, provides CLECs with available installation dates when in inquiry mode and provides a calculated due date in the firm order mode. Stacy OSS Reply Aff. ¶¶ 28-29. BellSouth's own retail service representatives likewise obtain a calculated due date at the time they submit an order. Stacy OSS Reply Aff. ¶ 29.

Some CLECs raise issues concerning access to customer service records ("CSRs"). In particular, KMC claims it is unable to obtain nondiscriminatory access to CSRs. KMC Telecom, Miller Aff. ¶ 16; see also AT&T at 45 (contending that unlike BellSouth, CLECs do not have ready access to CSRs). In fact, however, CLECs' ability to access CSRs through LENS is subject to the same restrictions as BellSouth's own customer service representatives. Stacy OSS Aff. ¶ 38. BellSouth also does not provide access to credit information and other proprietary customer information contained in CSRs pursuant to regulation by the appropriate state commission. See MCI at 34 (criticizing LENS for its failure to provide customers' payment history). Accordingly, BellSouth offers such access where the state PSC has so required. For example, CLECs currently may access the payment histories of Florida customers, Stacy OSS Aff. ¶ 40, but not Louisiana customers.

b. Ordering and Provisioning. CLECs' contentions that BellSouth has failed to provide nondiscriminatory access to its ordering and provisioning OSSs are equally meritless.

Several commenters point out that EDI does not allow for electronic ordering of all resold services and UNEs. See AT&T at 46; DOJ Ex.4 at A-21 to A-22. BellSouth, however, offers electronic ordering of interim number portability, as well as UNEs such as loops and ports, through EDI. Stacy OSS Aff. ¶ 58; Stacy OSS Reply Aff. ¶ 55. The 34 resale services which may be ordered using EDI represent more than 90 percent of BellSouth's revenues from residential and small business operations. Stacy OSS Aff. ¶ 67 & Ex. WNS-27. Moreover, other unbundled elements, such as infrastructure elements like trunking, may be ordered over EXACT. Stacy OSS Aff. ¶ 58. Electronic ordering is not practical for complex services that require extensive negotiations with the customer and are ordered in low volumes, whether these services are ordered by BellSouth's retail operations or a CLEC. See Stacy OSS Aff. ¶¶ 62-65; Stacy OSS Reply Aff. ¶ 57.²⁵ In addition, BellSouth currently has mechanized service order generation capabilities for UNEs amply sufficient to process the expected volume of CLEC orders. Stacy OSS Reply Aff. ¶ 56. See also Stacy OSS Aff. ¶ 66-67 (discussing manual procedures); Stacy Performance Aff. ¶¶ 4-11 (discussing BellSouth service centers).

Despite the contentions of some commenters, see AT&T at 46; MCI at 50, BellSouth provides CLECs with prompt confirmation of their orders. After receiving a properly formatted

²⁵ MCI is simply incorrect in alleging that all orders for more than eight lines must go through the LCSC, even when the service is being switched "as-is." MCI at 24. Such orders may be easily accomplished using EDI. Stacy OSS Aff. ¶ 71.

order over EDI or LENS, BellSouth generally provides a firm order confirmation within 24 hours. Stacy OSS Reply Aff. ¶ 62. For electronic orders, the firm order confirmation is provided electronically; for manual orders, the firm order confirmation is provided by facsimile. Stacy OSS Aff. ¶ 75. In either case, the confirmation is not a "barebones transmissio[n]," AT&T at 46, but rather identifies the class and the type of service actually ordered by the CLEC. Stacy OSS Reply Aff. ¶ 63.

Commenters who have experienced longer delays in receiving firm order confirmations are likely formatting their requests incorrectly: where the CLEC has submitted an invalid request, BellSouth attempts to fix the error if possible and then returns a firm order confirmation, rather than simply sending the CLEC an error notice. Stacy OSS Reply Aff. ¶ 51. MCI notes that "CLECs are still learning the process and are likely to make mistakes." MCI at 16. CLEC formatting errors are, however, decreasing dramatically. See Stacy OSS Reply Aff. ¶ 54. Just as important, several CLECs' orders are being processed without any errors at all, see Stacy OSS Aff. Ex. WNS-41, demonstrating that those CLECs who are experiencing high error rates must bear responsibility for those mistakes. AT&T, for instance, concedes that it is not sending error-free service requests to BellSouth in Louisiana. AT&T at 46.

As CLECs point out, BellSouth handles many rejected orders manually. Id.; MCI at 15-16. BellSouth's ordering interface conforms to the industry standards promulgated by the OBF, which do not provide for electronic return of orders containing errors. Stacy OSS Aff. ¶ 75. Moreover, manual handling (for which BellSouth has ample staffing, see Stacy Performance Aff. ¶¶ 4-11; Stacy OSS Aff. ¶ 134 & WNS-47) allows BellSouth to attempt to cure the CLEC's

error, and, if necessary, return the order to the CLEC with a notice of what corrections are necessary to ensure proper processing. Stacy OSS Reply Aff. ¶¶ 52-53.

Manual handling thus provides CLECs with error-handling that is comparable to what BellSouth provides itself. Id. ¶ 53. Nevertheless, and despite the fact that CLECs such as AT&T are not yet ready to handle electronic order rejections, BellSouth is developing an electronic order response capability for EDI that will automatically return improperly formatted errors to CLECs with the most likely formatting errors identified. Stacy OSS Aff. ¶ 75; Stacy OSS Reply Aff. ¶ 52.

BellSouth likewise provides CLECs electronic notice when its customer misses an appointment. Id.; see MCI at 18. BellSouth also provides CLECs with prompt notification by telephone whenever it becomes apparent that BellSouth lacks the facilities or the manpower to turn up service on the previously scheduled date. While MCI contends that telephone notification is discriminatory, MCI at 18-19, it has failed to provide any actual evidence suggesting that telephone notification puts it at a competitive disadvantage.

LENS was designed primarily as a pre-ordering tool for CLECs but also allows CLECs to provide the most common types of ordering procedures. Stacy OSS Aff. ¶ 57. For instance, LENS allows CLECs to change customers “as-is” or with changes. Id. ¶ 71. These functions and others — such as change orders or electronic changing of the features on a customer’s service — also are easily accomplished using the industry-standard EDI interface, which ensures CLECs nondiscriminatory access to BellSouth’s OSSs for ordering and provisioning functions. Id. ¶ 71; Stacy OSS Reply Aff. ¶ 8.

Of course, even though it is currently satisfying the “nondiscriminatory access” requirement established in the Act, BellSouth is continuing to work closely with CLECs to resolve any concerns or problems they may have with any of the ordering interfaces. This flexibility, however, is certainly not grounds for denying BellSouth’s instant application. See Sprint at 27. Future improvements that will accommodate the special needs of particular CLECs do not constitute evidence that BellSouth’s interfaces are deficient or “interim” in nature. Instead, such improvements should be recognized for what they are: BellSouth’s good-faith attempts to provide CLECs with ongoing assistance that will allow them to compete into the indefinite future. See Stacy OSS Aff. ¶ 144.

c. Maintenance and Repair. BellSouth provides CLECs with access to the industry standard T1M1 trouble reporting interface, and has agreed to develop a similar system for AT&T which will provide electronic flow-through to BellSouth’s OSSs for local service trouble reports. Stacy OSS Aff. ¶ 97. In addition, BellSouth also provides access to maintenance and repair services through the TAFI interface for CLECs which is identical to that used by BellSouth’s own customer service representatives. Stacy OSS Aff. ¶¶ 86, 89. TAFI provides access to repair and maintenance functions that far surpasses the industry standard, and few commenters have made any criticism of its capabilities.

CLECs are provided with direct access to TAFI. Stacy OSS Aff. ¶ 89 & Ex. WNS-33. Sprint’s contention that BellSouth employees retrieve the CLEC’s maintenance and repair information and manually enter it into BellSouth’s systems, Sprint at 30-31, is thus incorrect. CLECs are able to input trouble reports, test and clear trouble reports with the customer on the

line, obtain commitment times, and check on the status of previously entered trouble reports in the same way BellSouth's retail representatives would. Stacy OSS Aff. ¶ 82. Using TAFI, CLECs generated over 3,000 trouble reports from June through September 1997, of which over one thousand were generated during September. Performance data (as well as testing) confirm that the access BellSouth provides for this purpose is both adequate and nondiscriminatory. Stacy Performance Affidavit ¶¶ 32-37.

d. Capacity. BellSouth has subjected its electronic interfaces to stringent stress testing. Stacy OSS Aff. ¶¶ 120-135. Contrary to some commenters' contentions, see, e.g., AT&T at 55-56, these systems have more than adequate capacity. In August 1997, BellSouth processed more than 10,000 local service requests region-wide. Stacy OSS Aff. ¶ 111 & Ex. WNS 38, 39. Even at these levels, however, BellSouth's electronic systems have more than 80 percent excess capacity, and additional capacity can be added quickly. Id. ¶ 126.

Despite the claim of the Telecommunications Resellers Association, LESOG does not operate as a "bottleneck." TRA at 28. BellSouth's volume testing indicates that this downstream OSS (which electronically generates service orders) has more than sufficient capacity to process 10,000 CLEC service requests daily. Stacy OSS Aff. ¶ 120.

Alleged capacity problems that have arisen thus far seem to be nothing more than the consequences of CLEC errors. For instance, AT&T alleges that the Residence Street Address Guide ("RSAG") "became inaccessible for long periods of time" during the month of August 1997. See AT&T at 55. In fact, the problem cited by AT&T arose in an interim address validation system that AT&T was using prior to its implementation of LENS and that has been

superseded by LENS. Multiple AT&T employees were improperly using the same log-in identification to access this system and also were inputting NPA/NXX combinations that are not found in BellSouth's service territory. Stacy OSS Reply Aff. ¶ 50. This caused error messages identifying improper entries. Even though AT&T describes them as such, the error messages were not RSAG errors and have no bearing on the OSS access available through any of BellSouth's current systems. Stacy OSS Reply Aff. ¶¶ 50-51.

e. Billing. Opponents' complaints about billing are misplaced. MCI's King complains that BellSouth does not provide billing information in the industry standard format, CABS, see MCI's King ¶¶ 208-215; King Supp. Aff. ¶ 13, but ignores that BellSouth has developed a process to provide MCI and other CLECs with billing information in a CABS format and has in fact sent MCI and AT&T bills in CABS format. Hollett Aff. ¶ 7. MCI also fails to recognize that CABS is in fact not the "industry standard," as the OBF has not defined standards for all aspects of local competition billing. Hollett Aff. ¶ 8. Likewise, MCI is just wrong when it claims a CRIS bill does not provide usage data or call detail. See id. ¶ 10.

BellSouth also provides CLECs with usage sensitive data for all customers on a daily basis. Hollett Reply Aff. ¶ 2. BellSouth does not, however, include flat-rated calls in the daily usage file since BellSouth does not currently measure such calls and lacks the system capacity to do so. Id. Finally, problems with billing records cited by some commenters are concededly a thing of the past. Hollett Reply Aff. ¶¶ 8-9. Indeed, AT&T's own expert, Jay Bradbury explains that BellSouth has "implemented a series of fixes for most" of these alleged problems. AT&T's Bradbury ¶ 250.

f. CLEC Training and Access to Information. BellSouth provides CLECs with extensive training on its electronic interfaces. LENS training includes an overview as well as step-by-step guidance through actual LENS log-in and use. Students are shown procedures for obtaining pre-ordering information, customer service records, address validation, telephone numbers, features and services, due dates, as well as for performing conversions "as-is" and "as-specified," viewing of firm order commitments, checking the status of orders, and changing existing orders. Stacy OSS Reply Aff. ¶ 74. Similarly exhaustive training on TAFI also is provided to CLECs. Stacy OSS Aff. ¶ 141, Stacy OSS Reply Aff. ¶ 74. Many of the CLECs who now criticize BellSouth's training have been highly complimentary of that training outside section 271 proceedings. LCI, for instance, sent BellSouth a letter praising the EDI training its personnel received in July 1997. Stacy OSS Aff. ¶ 139.

Extensive documentation regarding BellSouth's OSSs also is provided to CLECs, both as part of the training classes and thereafter. BellSouth provides all necessary specifications, business rules, and other information required to use BellSouth's OSS interfaces. See Stacy OSS Reply Aff. ¶ 75 (listing documentation). The LENS Users Guide, for example, was updated on September 20, 1997 and is available on BellSouth's World Wide Web site. Stacy OSS Aff. ¶ 138 & Ex. WNS-48. And contrary to commenters suggestions, see, e.g., AT&T at 45, CLECs also are provided advance notice of system changes. For instance, BellSouth provided CLECs with advance notice of recent enhancements to LENS and will continue to provide similar notice in the future. Stacy OSS Reply Aff. ¶ 73. In addition, the Louisiana PSC has required that any

changes to BellSouth's Local Interconnection and Ordering Guide, its Resale Ordering Guide, and its Collocation Handbook shall be filed with the PSC. Compliance Order at 5.

D. Performance Measurements

BellSouth furnished with its Application, and has agreed to provide in the future, performance measurements that allow the Louisiana PSC, interested CLECs, and this Commission to verify and monitor BellSouth's provision of network interconnection and access on a nondiscriminatory basis. These measurements go beyond the measurements that BellSouth produces as the result of negotiated interconnection agreements with CLECs. They are the outgrowth of a tremendous commitment on the part of BellSouth to capture and store every single order that it has processed for both its retail and its CLEC customers. Stacy Performance Aff. ¶¶ 13-15. For service categories for which BellSouth does not have historical data, BellSouth has agreed to publish target intervals, which will allow BellSouth to generate data for future measurements. Stacy Performance Aff. ¶¶ 27-28.

The data demonstrate that BellSouth is providing nondiscriminatory service for interconnection trunking, provisioning of UNEs, and resale services. However, for CLECs the results of these measurements are of secondary interest, since for them the measurements have become quasi-checklist items in themselves. Like characters out of Bleak House, these commenters advocate process without regard to results, because the very imposition of additional requirements promises to slow BellSouth's entry into long distance. See, e.g., ACSI at 46-49; ALTS at 6-11; AT&T at 51-52; DOJ at 31-33; Intermedia at 9-13; MCI at 43-52. In contrast to the measurements produced by BellSouth, which allow interested parties to verify that CLECs

are receiving interconnection and access in accordance with the Act, the proposed additional measurements would provide little or no relevant information. Yet, they would impose an extraordinary and costly burden on BellSouth.²⁶ More importantly, however, BellSouth simply is not obligated to commit to these particular performance measurements to meet the requirements of section 271.

CLECs and the DOJ offer no statutory support for their claim that BellSouth has failed to meet performance measurement "requirements." As construed by the Commission, the Act simply requires BellSouth to demonstrate by a preponderance of the evidence that CLECs are able to receive interconnection and network access in a nondiscriminatory fashion. See Michigan Order ¶ 45. The Act is silent as to the type of evidence that BellSouth may provide to meet this burden. It is for BellSouth — not DOJ or CLECs — to determine what evidence to present to carry this burden. ALTS vaguely contends that there "is absolutely nothing in general jurisprudence or the '96 Act" to prevent the Commission from imposing such standards. ALTS at 7. However, the Act expressly precludes the Commission from extending the competitive checklist "by rule or otherwise." 47 U.S.C. § 271(d)(4). Requiring an applicant to provide specific performance measurements when it can otherwise carry its burden of proof would be just

²⁶ Ameritech has calculated that if all of the measurements demanded by interexchange carriers in their proposed requirements were implemented, it would be forced to produce over 1.9 million data elements each month. See Ex Parte Letter from Lynn Shapiro Starr, Executive Director, Federal Relations, Ameritech to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission, Re: RM-9101, Petition for Expedited Rulemaking of LCI International Telecom Corp. and Competitive Telecommunications Association to establish Technical Standards for OSS, RM-9191 (November 18, 1997).

such an impermissible extension of the checklist. Furthermore, as a matter of “general jurisprudence,” it is the party who bears the burden of going forward with evidence that determines the particular evidence to be used. Cf. Fed. R. Evid. 301, 401.

While the Commission stated its belief that the “most appropriate solution to meet the needs of a competitive local exchange market” is “the use of industry standards,” Michigan Order ¶ 217, section 271 affords no basis for imposing such standards through a Commission dictate. Congress intended performance measurements, if any, to be agreed to on a case-by-case basis, through negotiation of voluntary agreements between CLECs and BOCs. See 47 U.S.C. § 252(a). To aid in these negotiations, Congress provided for mediation and arbitration by state commissions. See 47 U.S.C. § 252(a)(2). Congress did not intend that these procedures would be circumvented by national decrees. See generally Iowa Utils. Bd., 120 F.2d 753.

CLECs nevertheless are attempting to obtain through section 271 proceedings the national standards that they have been unable to secure through legitimate avenues. Unlike measurements that are negotiated as part of interconnection negotiations, in which a CLEC must make reasonable demands or fail to reach agreement, in a section 271 proceeding a CLEC can be unreasonable in its demands, because only the Bell company applicant suffers from delay and confusion of the issues.

AT&T’s comments vividly illustrate this problem. AT&T complains about the performance measurements that BellSouth has made available, and insists that BellSouth’s application should be rejected solely on the basis of the type of measurements that BellSouth has submitted. AT&T at 51-52. According to AT&T, BellSouth’s failure to submit data on every

single performance measurement discussed by the Commission in its Michigan Order is “fatal to BellSouth’s application.” Id. at 52. AT&T also points to twenty-two performance measurements to which Bell Atlantic and NYNEX voluntarily agreed without regard to the requirements of sections 251 and 252, as “[f]urther guidance” that BellSouth should follow. Id. at 51. AT&T does not acknowledge that it did not request these measurements as part of its own interconnection agreement with BellSouth. Instead, in its interconnection agreement, which covers all nine states in BellSouth’s region, AT&T agreed that BellSouth should provide a set of performance measurements that is more limited than the set BellSouth already committed to make generally available. See Stacy Performance Aff. ¶¶ 16, 27. Incredibly, AT&T now contends that these same performance measurements, although perfectly acceptable for monitoring of BellSouth’s performance, are inadequate for the Commission to use in assessing BellSouth’s application. ACSI likewise castigates BellSouth for supposed measurement “deficiencies,” although it did not perceive any such problems when negotiating its interconnection agreement with BellSouth. ACSI at 46-49.

Some parties contend that BellSouth’s performance measurements are inadequate precisely because they have been negotiated with individual CLECs. For example, MCI claims that the performance measurements found in specific interconnection agreements are unreliable unless a CLEC can “obtain the best [performance measurements] of each [interconnection] agreement.” MCI at 48. ALTS asserts that the fact that a particular competitor requested a particular performance measurement “has virtually no probative value in determining whether the

measure will enable the Commission to discern anticompetitive or unequal treatment.” ALTS at 9.

As a preliminary matter, no party has offered any reason why the Commission would need measurements different from those that fulfill the monitoring requirements of CLECs themselves. Accordingly, if these measurements are satisfactorily probative for CLECs, there is no principled reason why these same measurements do not provide the Commission with all of the information that it needs to monitor BellSouth’s performance. Performance measurements that are obtained as a result of the “give-and-take process that is essential to successful negotiations,” Iowa Utils. Bd. 120 F.3d at 801, are in fact the most revealing measurements that this Commission can review, because they are the measurements that CLECs genuinely believe are needed to monitor compliance and are consistent with the Act’s requirements. Nor are CLECs limited to data solely about the service they themselves receive. Through the data warehouse, CLECs will have access to both their own data and summaries of all CLEC and BST aggregate data. Stacy Performance Reply Aff. ¶ 28.

Without the discipline of negotiations, CLECs do not have to determine which measurements are truly necessary to monitor nondiscrimination but can demand any number of irrelevant measurements. Ignoring the state-level focus of section 271 proceedings, for example, ACSI demands to see data reported “on a city or end office basis rather than an averaged statewide basis,” because it “competes with BellSouth in specific urban areas.” ACSI at 46. Intermedia wants to see measurements for data services as well as voice services because such measurements are “particularly helpful” to it. Intermedia at 13. DOJ argues that BellSouth must

provide fourteen additional permanent performance measurements, without recognizing that much of the information it seeks has already been produced by BellSouth. DOJ at 32, n.63; Stacy Performance Reply Aff. ¶ 36. MCI insists that measurements that report on the provisioning of orders are unacceptable unless, “[a]t a minimum,” BellSouth separately reports new service installations, service migrations without changes, service migrations with changes, local number porting, move and change activities, feature changes, and service discounts. MCI at 52. The list of desired measurements and sub-measurements will be endless and ever-changing if the Commission does not call a halt, because with these demands CLECs believe that they have discovered a basis for blocking Bell company competition without having to point to a single deficient checklist item.

While DOJ no longer appears rigidly to advocate actual installation intervals, (compare DOJ South Carolina at 46 with DOJ Louisiana at 32), some CLECs still insist on the need for this measurement. BellSouth therefore has provided extensive data addressing this issue. See ALTS at 8; AT&T at 51; Intermedia at 11. In its Michigan Order, the Commission stated that in a future application Ameritech should provide average installation intervals. See Michigan Order ¶ 166. Ameritech had provided the Commission with a measurement that only tracked installations completed outside of a six-day interval. Id. The Commission concluded that this measurement could mask discrimination, because “‘if 100 percent of Ameritech’s retail customers receive service on day one, while 100 percent of the CLEC’s customers do not receive their service until day five, then a report of installations outside of six days will show parity of

performance, not revealing the discriminatory difference in performance between Ameritech and the CLEC.’” Id. (quoting DOJ evaluation).

In response to this concern, BellSouth has provided the Commission with measurements that track installation due dates on a daily basis. See Stacy Performance Aff. Ex. WNS-10. When combined with BellSouth’s data showing the (high) percentage of due dates that are met, id. at Ex. WNS-9, these measurements allow the Commission to compare performance between BellSouth’s retail and wholesale operations for business and residential classes of service, and dispatch and nondispatch service orders, down to the day. Id.

Because CLECs are able to request due dates that meet their particular needs (and that are often later than the date assigned on a nondiscriminatory basis by BellSouth’s systems), it is CLECs, and not BellSouth, that control the length of installation intervals. If CLECs were typically to request due dates one day later than the date offered by BellSouth, the average installation interval measurement would reveal spurious “discrimination” — even if BellSouth was meeting requested due dates 100 percent of the time. In order for this measurement to be accurate, BellSouth would have to “back out” all cases in which CLECs reject the first available due date — a cumbersome process BellSouth’s OSSs have not been designed to accomplish.²⁷

²⁷ For these reasons, BellSouth does not agree that an additional average installation measurement is needed, although it will provide such data if the Commission somehow deems the measure necessary for compliance with section 271. When BellSouth generated this measurement for South Carolina and its region, the measurement revealed no discrimination — an outcome that was hardly surprising, given BellSouth’s lack of discrimination in scheduling and meeting appointments. See Reply Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, Appendix, Tab 8, Reply Affidavit of William N. Stacy ¶ 10.

Initial performance measurements demonstrate that BellSouth is providing non-discriminatory access to services in Louisiana and throughout BellSouth's region. Stacy Performance Aff. at ¶ 69. Accordingly, AT&T is reduced to contending that BellSouth's use of three standard deviations as a measure of nondiscriminatory performance is inappropriate. AT&T asserts that this deviation "has been specifically rejected as too lax by the courts in discrimination cases." AT&T at 54. Although an employment discrimination case not relevant to the issue at hand, AT&T's supporting authority — Rendon v. AT&T Tech., 883 F.2d 388, 397-98 (5th Cir. 1989) — is revealing in other ways. In Rendon, AT&T, as the defendant, unsuccessfully argued that three standard deviations was a "strict legal benchmark" for discrimination and that it was reversible error for the district court to have credited a statistical model based on 2.9 standard deviations. Id. at 397-98. Having lost that argument, AT&T now presents Rendon to the Commission as authority for a proposition that is precisely opposite to the one AT&T advanced in that case. Moreover, AT&T misstates the holding in Rendon: The court in that case did not "specifically reject as too lax" three standard deviations, but held only that it was not a reversible legal error for the district court to have relied on 2.9 standard deviations. Id. at 398. AT&T's misuse of Rendon further demonstrates its unprincipled approach to these proceedings.

AT&T's factual assertions about performance measurements are no more reliable. For example, while AT&T suggests that BellSouth has improperly failed to provide its average speed to answer for operator services and directory assistance, (AT&T's Pfau ¶ 55), these measurements are already publicly available; the Louisiana PSC (as well as all other state

commissions in BellSouth's region) has set standards for these services, and BellSouth's compliance is monitored by the state commission. See Stacy Performance Reply Aff. ¶ 19. AT&T also demands numerous performance measurements for network performance that are not only unnecessary, but also could be implemented only by interrupting an end user's service. See AT&T's Pfau ¶ 56; Stacy Performance Reply Aff. ¶ 20.

With respect to actual performance, AT&T confuses perfection with nondiscrimination. For example, the difference between BellSouth and CLECs in many of the control charts that AT&T contends show "discrimination" is generally less than one percentage point. AT&T's Pfau ¶ 86; Stacy Performance Reply Aff. ¶ 26. Moreover, if there is any "discrimination" for many services, it is discrimination in favor of CLECs. Stacy Performance Reply Aff. ¶ 26.

Other CLECs challenge the accuracy of BellSouth's data. For example, MCI claims that BellSouth's performance for fulfillment of resale orders was "significantly worse" than data generated by BellSouth demonstrate. MCI's King ¶¶ 40-47. MCI does not explain its data collection criteria, nor has it agreed with BellSouth on performance measurements criteria. Stacy Performance Reply Aff. ¶ 30. In order to review this allegation, however, BellSouth extracted from its data warehouse all MCI service requests for the period of August 1 through October 27, and reviewed each order to determine how often BellSouth met the due date to which it had committed. Id. BellSouth met its due date 99.7 percent of the time — results that by any measure cannot be construed as discriminatory.

LCI contends that because BellSouth's measurements "report percentages that are within the upper and lower parameters selected by BellSouth," they "actually conceal" discrimination.